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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/778,764	02/08/2001	Bart Joseph Gerard Pauwels	Q62997	4162

7590 03/30/2007
SUGHRUE, MION, ZINN, MACPEAK & SEAS, PLLC
2100 Pennsylvania Avenue, N.W.
Washington, DC 20037-3213

EXAMINER

RYMAN, DANIEL J

ART UNIT	PAPER NUMBER
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2616

MAIL DATE	DELIVERY MODE
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03/30/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

SP

Advisory Action Before the Filing of an Appeal Brief	Application No. 09/778,764	Applicant(s) PAUWELS, BART JOSEPH GERARD	
	Examiner Daniel J. Ryman	Art Unit 2616	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 16 March 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: _____.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
 13. ☐ Other: _____.


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Continuation of 11. does NOT place the application in condition for allowance because: Applicant asserts that "[t]here is no suggestion in Calvignac that the one-byte trailer described at lines 34-38 of column 5 is already included in the data traffic as received from the prioritized source, as required in applicant's claim 1." Examiner, respectfully, disagrees. As previously outlined, Calvignac discloses that "[o]n trunks that support preempt/resume protocol, each packet is transmitted along with at least a 1-byte trailer which is used to indicate whether the packet is preempted." Col. 5, lines 34-36. Calvignac also discloses that "[t]he packet target 56 could be the final destination for the received packets or could be a packet switch used to route packets to other trunks for transmission to other nodes in a packet network." Col. 9, lines 8-11; see also col. 8, lines 10-15. Calvignac further discloses that received packets are buffered in either a high priority buffer or a low priority buffer according to the packet's class of service. Col. 8, lines 10-15; see also col. 3, lines 28-34. Taken together, these teachings disclose that an intermediate switch in this system will receive packets containing the one-byte trailer, will buffer these packets according to each packet's class of service in either a high priority buffer or a low priority buffer, and then will transmit these packets containing a one-byte trailer to each packet's respective destination by taking each packet from its buffer and then transmitting it. In this interpretation, the buffers are the "sources" wherein the buffers store packets containing the one-byte trailer. Thus, contrary to Applicant's assertion, Calvignac discloses that the one-byte trailer "is already included in the data traffic as received from the prioritized source."

In addition, Applicant asserts that "a central aspect of the invention" is that "the present invention incorporates a reassembly indicator into the control data in such a way as to not increase the amount of control data in the data traffic." However, Examiner notes that claim 1 recites: "incorporating into said control data, WHERE NOT ALREADY PRESENT, at least one reassembly indicator" (emphasis added). Thus, the claim only requires incorporation of the reassembly indicator where the data does not already contain the reassembly indicator. Since Calvignac discloses that the one-byte trailer includes a reassembly indicator (col. 6, lines 1-20, where the bits in the trailer byte are used during reassembly), and since Calvignac discloses that the one-byte trailer "is already included in the data traffic as received from the prioritized source," as outlined above, Calvignac is not required to disclose "said reassembly indicator being incorporated into said control data in such a way as to not increase the amount of control data already present in said data traffic." Simply, in situations where the reassembly indicator is already incorporated in the control data, as is the situation in Calvignac, the claim does not require the reassembly indicator to be incorporated into the control data in such a way as to not increase the amount of control data already present in the data traffic.

In view of the foregoing, Examiner maintains that the rejection of the claims in view of the cited prior art is proper.